ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Implementation of the
Telecommunications Act of 1996: CC Docket No. 96-115

Telecommunications Carriers' Use
of Customer Proprietary Network
Information and Other
Customer Information

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

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Dated: June 26, 1996

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SUMMARY

A review of the initial comments filed in this proceeding reveals that the positions taken by MCI reflect the most optimal balance of the customer privacy and competitive goals of the customer proprietary network information (CPNI) requirements set forth in the new Section 222 of the Communications Act of 1934.

With respect to the definition of "telecommunications service," various parties propose a wide range of approaches, from a single, all-encompassing category for all telecommunications and related services, at one extreme, to the "exact services [the customer] has ordered," as proposed by the Texas PUC, at the other. A number of parties also endorse the "three-bucket" approach proposed in the NPRM. As MCI explained in its initial comments, however, its proposed "two-bucket" approach -- for local and interexchange services, with CMRS and intraLATA toll services treated as "floating" services -- best fits the Congressional goal of protecting existing CPNI from any wider unapproved use as the BOCs and IXCs begin to invade each others' markets as a result of the 1996 Act. A single category for all services would completely eviscerate the protections of Section 222, while limiting the unapproved use of CPNI to the "exact service" the customer has already ordered would undercut the competitive goals of the 1996 Act.

With respect to the issue of customer "approval" under Section 222(c)(1), various parties propose that written approval be required, while the BOCs and AT&T argue for an implied "opt-out" approval mechanism. Because of the burden placed on the

customer by any method requiring that he or she initiate action, especially in writing, a written approval requirement would inhibit flexible customer choice and impede the development of competition envisioned in the 1996 Act. Similarly, an implied approval procedure requiring active refusal by the customer would result in almost no refusals, thereby undercutting the privacy protections of Section 222 and providing a tremendous competitive advantage to those carriers already in possession of CPNI for most telecommunications customers -- AT&T and the ILECs. Again, MCI's proposal of an explicit oral or written approval requirement provides the optimal balance of the privacy and competitive goals of Section 222 and the 1996 Act overall.

A related set of issues is presented by carriers' access to CPNI obtained in the course of providing service to other carriers. MCI agrees with TRA's proposed restrictions on facilities-based carriers' use of the CPNI of customers of resellers, where the facilities-based carrier obtains such CPNI in the course of providing service to such resellers. MCI's only qualification is that such restrictions should not be imposed where the underlying carrier and the reseller are affiliates providing services in the same category. MCI similarly proposes that, pursuant to the CPNI protection principles of Section 222(a) and (b), the Commission prohibit LECs from using "PIC-freeze" information, which constitutes CPNI they obtain by virtue of their provision of interstate access service to IXCs, to solicit similar "freezes" of customers' local and intraLATA toll service providers.

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REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), by its undersigned counsel, hereby replies to the initial comments filed in response to the Notice of Proposed Rulemaking initiating this proceeding (NPRM).[1] The NPRM seeks comment on the Commission's tentative conclusions as to the implementation of the customer proprietary network information (CPNI) requirements of the new Section 222 of the Communications Act of 1934, added by Section 702 of the Telecommunications Act of 1996 (1996 Act).[2]

In its initial Comments, MCI proposed policies that it believes optimally balance the privacy and competitive goals of Section 222. Thus, for example, MCI proposed a definition of "telecommunications service" that groups all regulated services into one of two categories -- local or interexchange -- consistent with the purposes of the 1996 Act. MCI also took the position that the customer "approval" required under Section

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[1] FCC 96-221 (released May 17, 1996).

[2] Pub. L. No. 104-104, 110 Stat. 56 (1996). codified at 47 U.S.C. §§ 151 et seq.

222(c)(1) may be either oral or written and that such approval must be preceded by notification -- which can also be oral -- that reasonably informs the customer of both the nature of the approval request and the proposed use of CPNI. This balanced approach, also reflected in MCI's treatment of the other issues raised in the NPRM, protects customer privacy while facilitating the development of competition in all market segments.

In this Reply, MCI will address certain of the initial comments made by other parties on these and other issues raised in the NPRM. Its failure, however, to address any specific positions taken by any commenter should not be viewed as either acquiescence in, or disagreement with, those positions.

A. Service Definitions

Various parties support the Commission's "three-bucket" approach to the definition of "telecommunications service" -- local, interexchange and CMRS -- although US West and other Bell Operating Companies (BOCs) and local exchange carriers (LECs) argue for a single all-encompassing telecommunications service category.[3] AT&T Corp. also urges the Commission to adopt a

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[3] See US West at 5-10. See also GTE at 10-11. (All initial comments will be cited in this abbreviated fashion.) As a backup, US West and GTE support MCI's position, namely, to create two "buckets" with CMRS "floating." See, e.g., US West at 12-14.

GTE raises the bogus argument that "undue" restrictions on carriers' use of CPNI would constitute a "taking" under the Fifth Amendment. GTE at 13-14. The notion that customers' proprietary network information that is gleaned by a carrier, especially a monopoly local service provider such as GTE, from its provision of service to the customer somehow becomes the carrier's property

single service category.[4] At the other extreme, the Texas Public Utility Commission (Texas PUC) contends that since there is competition among services within each category, the service categories are too broad and thereby infringe on privacy rights.

MCI strongly opposes all of these alternatives to its proposed "two-bucket" approach, since the alternatives fail to further the goals of Section 222. At one extreme, the use of a single service category would render Section 222 meaningless, since the effect would be to permit the use of CPNI to market any other telecommunications-related service. Such an unrestricted approach would vastly favor those carriers -- AT&T and the LECs -- that are already in possession of CPNI for most customers, thereby enabling them to leverage their dominant control of customer information to perpetuate dominant control of emerging competitive markets.

On the other hand, the Texas PUC approach of limiting the use of CPNI to the "exact services [the customer] has requested"[5] also fails to further the goals of Section 222. As MCI explained in its initial comments, the purpose of that provision was to protect existing CPNI from wider use (in the absence of customer approval) as carriers -- primarily the BOCs and interexchange

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perhaps is intended as a LEC self-parody. In any event, this argument, based on inapposite cases involving business records, cannot be taken seriously in the context of Section 222.

[4] AT&T at 6-9.

[5] Texas PUC at 6-8.

carriers (IXCs) -- begin to move into each others' markets as a result of the 1996 Act. This purpose would not be furthered by prohibiting a carrier from using CPNI to market a service that the carrier was already able to provide prior to the passage of the legislation.

Thus, MCI's two-bucket approach best fits the Congressional intent underlying Section 222, since it would protect CPNI from any use other than for the services the BOCs and the IXCs were already able to provide prior to the 1996 Act. As explained in the NPRM and in MCI's initial comments, logic and administrative consistency also require that the LECs be treated in the same manner as BOCs and that CMRS and intraLATA toll services be treated as falling in the same predominant category as a given carrier's other services. As also explained in MCI's initial comments, at 4, firms that provide CMRS are not entering new service markets as a result of the 1996 Act, so the Commission's proposed three-bucket approach is not as consistent with the purposes of Section 222 as MCI's two-bucket approach.

Some of the BOCs suggest that CPE, inside wiring and enhanced services should be treated as falling into each carrier's predominant regulated service category, in the same manner as the Commission is proposing to treat intraLATA toll service and MCI is proposing that CMRS be treated.[6] They contend that these services are primarily offered as part of service

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[6] See, e.g., Bell Atlantic at 3-7.

"packages" and that customers expect such packaging. NYNEX also argues that enhanced services are "used in the provision of" basic services within the meaning of Section 222(c)(1)(B).[7]

It is nonsensical, however, to claim that enhanced services are "used in the provision of" of basic service, although the converse clearly is true. More importantly, enhanced services, inside wiring and CPE do not fall within the definition of "telecommunications" in the new Section 3(48) of the Communications Act, added by Section 3(a) of the 1996 Act, since none of them constitutes "the transmission ... of information of the user's choosing, without change in the form or content of the information ...." Accordingly, none of them is a "telecommunications service," and thus none can be in the same service category as any carrier's other services. CPNI, in short, cannot be used to market any enhanced service, CPE or inside wiring without customer approval.[8]

NYNEX argues that, since the BOCs already provide intraLATA toll service and, for the most part, IXCs do not, intraLATA toll should be included in the local category, rather than shared

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[7] NYNEX at 11-13.

[8] By the same token, as Ameritech (at 4-5) correctly points out, customer data derived from the usage of enhanced services and CPE are not CPNI, since those are not telecommunications services. Section 222 thus puts no restrictions on the use of data derived from a customer's use of enhanced services or CPE (except for the restrictions on data relating to calls to alarm service providers in Section 275(d)).

between the local and interexchange categories.[9] Otherwise, it claims, IXCs will be able to use their interexchange CPNI to invade intraLATA toll, while the BOCs will not be able to use any of their CPNI to market interexchange services. NYNEX acknowledges that it took the opposite view in federal and state proceedings concerning the competitiveness of the intraLATA toll market but argues that, since it lost those disputes, the resulting administrative findings contrary to its position in those cases confirm the traditionally local nature of intraLATA toll service.[10]

Thus, NYNEX is claiming that the LECs' prior successful exclusion of competition in the intraLATA toll market should be rewarded and codified in CPNI rules that continue to treat that market as a LEC preserve protected from IXC incursions. NYNEX's cynical attempt to subvert Section 222 in this way should be rejected. Since, as NYNEX admits, the intraLATA toll market was already being opened up to IXC participation prior to and independently of the 1996 Act, partly as a result of the proceedings rejecting its prior views, the purpose of Section 222 would not be served by treating that market as always within the local service category.

Finally, BellSouth argues that any regulations implementing Section 222, especially as to service definitions, should be

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[9] NYNEX at 8-10.

[10] Id. at 9-10 & n.14.

"safe harbor" regulations only, and that other reasonable interpretations should not be prohibited.[11] MCI disagrees, since these rules should have the full force and effect of law to ensure the necessary uniformity required for a fair and effective CPNI regime.[12]

B. Customer Approval Under Section 222(c)(1)

Several commenters argue that Section 222(c)(1) requires written approval, preceded by written notification of customers' CPNI privacy rights. They contend that the focus of Section 222 is privacy and that oral notifications and approvals, if permitted, could lead to abuse, confusion, verification problems and other inconsistencies.[13]

At the other extreme, the BOCs and AT&T generally contend that carriers should be allowed to use implied "opt-out" approval methods, as well as oral or written approval, although they concede that such implied opt-out approval could only be used

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[11] BellSouth at 4-6.

[12] One other point related to the service definition issue is the BOCs' argument that whatever service definitions are chosen will ultimately become obsolete. See, e.g., Pacific Telesis at 2-3. NYNEX, at 10-11, even suggests that the Commission should establish a future date certain at which it will initiate a proceeding to review the continued applicability of its service categories. Although MCI does not disagree with NYNEX's goal, it does not believe that any specific date needs to be established to revisit the issue, since there are already adequate Commission procedures for any interested party to seek Commission review of the continued validity of these service categories.

[13] See, e.g., CompTel at 6-7; Consumer Federation of America at 6-8; CompuServe at 5-6.

after prior written notification.[14] AT&T goes so far as to suggest that the prior business relationship between the customer and carrier constitutes "approval" of CPNI use, unless the customer notifies the carrier otherwise after a single written notification of CPNI rights.[15]

MCI opposes both the proposals for a written approval requirement, as detrimental to the development of the competition that was the main goal of the 1996 Act, and the AT&T/BOC "opt out" approach, as anti-consumer and anticompetitive in effect. For reasons explained in MCI's initial comments, written approval is not required by the text of Section 222(c)(1) and, because of the effort required on the part of the consumer, would result in few approvals, thus impeding the entry of carriers into new markets that was envisioned in the 1996 Act.

For the same reason, the opt-out approach, requiring the consumer to take action to deny approval, would result in "approvals" in almost all cases, although typically without any actual customer review and consideration. The opt-out approach thus would not only result in an uninvited invasion of customers' privacy but would also advantage the incumbent LECs and the former dominant IXC by virtue of the fact that they have had long-standing relationships with most consumers as dominant carriers. The LECs, in particular, have CPNI for virtually all

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[14] See, e.g., BellSouth at 18-22; Pacific Telesis at 7; ALLTEL at 5-6.

[15] AT&T at 12-13.

telecommunications consumers in any local market, and an opt-out approval requirement would result in their wholesale access to almost all of it for marketing and other uses, thus eliminating the protections supposedly secured by Section 222. In short, if competition is to take firm hold and grow evenly in all market segments, while protecting customer privacy, customer approval under Section 222(c)(1) should be explicit, whether it is communicated orally -- with any of the verification techniques discussed in MCI's initial comments -- or in written form.[16]

A related issue is Ameritech's request that the approvals it has already obtained be considered valid, and that the rules established in this proceeding not operate retroactively.[17] MCI has no problem with allowing such prior approvals as long as the means used by Ameritech to obtain them were fully consistent with the rules that the Commission ultimately adopts in this proceeding. This is essential, because an undertaking inconsistent with a rule cannot be said to comport with the rule and, of course, affected consumers could not be viewed as having given their approvals if the means used to acquire them are not consistent with the rules adopted to achieve that end.

Some BOCs argue that the exception in subsection (d)(1) should allow carriers to use CPNI to perform installation,

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[16] MCI has no objection to written notification as a possibility, of course, as long as it is followed by the customer's explicit oral or written approval, rather than simply by an "approval" implied by silence.

[17] Ameritech at 2.

maintenance and repair for any service, not just the service category in which the CPNI was obtained.[18] As indicated in MCI's initial comments, however, CPNI should be used only for those particular functions for the same service category. Otherwise, the exception in (d)(1), which might not be viewed as limited to those functions, would become too wide.

Ameritech also argues that CPNI in the possession of a carrier should be available to any affiliate for any use that the carrier could have made of it and that if a customer has already been provided more than one service category by a carrier or its affiliates, the carrier should be able to use all of its CPNI for that customer for any service in those categories.[19] MCI has no objection to the sharing of CPNI among affiliates, as long as they all provide services in the same category or the customer has approved other uses. CPNI should not be shared with an affiliate providing service in another category, however, without customer approval. By the same token, MCI agrees with Ameritech that the customer's approval of other uses of his CPNI should extend to all affiliates, whether or not they are in the same service category.[20]

As for CPNI derived from more than one category of service, MCI explained in its initial comments that such CPNI should be

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[18] See, e.g., Pacific Telesis at 4-5.

[19] Ameritech at 4.

[20] Id. at 12.

divided into its categories of origin and kept separate for marketing and all other purposes. Such separation and the prohibiting of affiliates in different categories from sharing CPNI without customer approval are both necessary correlates to the basic restriction in Section 222(c)(1) prohibiting any unapproved use of CPNI other than in connection with the service from which it is derived.

Another set of issues is presented by carriers' use of CPNI obtained in the course of providing service to other carriers. Addressing the issue of the CPNI of customers of "switchless" resellers, the Telecommunications Resellers Association (TRA), at 8-13, proposes restrictions on the underlying facilities-based carrier's use of such CPNI obtained in the course of providing service to the resellers. MCI agrees with TRA that such restrictions are necessary to implement the general CPNI protection principles of Section 222(a) and (b). The one exception, of course, would be where the reseller is an affiliate of, and provides the same category of services as, the underlying carrier, as discussed above. In that situation, no restrictions on the sharing of CPNI between the affiliates are necessary.

A related issue is presented by LECs' use of a type of CPNI obtained in the course of providing interstate access service to IXCs. LECs are increasingly using "PIC freeze" information to advance their own marketing positions.[21] LECs use the fact that

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[21] A "PIC freeze" occurs when a LEC solicits a customer to direct that it not change the customer's service from a

a customer has "frozen" his or her IXC choice to solicit the customer to "freeze" his or her current local and intraLATA toll carrier in a similar manner, before local and intraLATA toll competition has had a chance to develop. Such PIC-freeze information, however, constitutes CPNI, which the LEC has received simply on account of its provision of interstate access service to the customer's IXC. The Commission should halt this abuse, which directly frustrates the intent of the 1996 Act to develop competition in all service markets, by applying the CPNI protection principles of Section 222(a) and (b) to prohibit such use of PIC-freeze information without the customer's approval. In fact, the solicitation of PIC-freeze information is so disruptive to competition in all market segments that the Commission should prohibit the practice altogether.

Some competitive access providers (CAPs) and others argue that the goals of Section 222 would best be served by subjecting incumbent LECs (ILECs) to more stringent approval and other CPNI requirements than non-dominant carriers.[22] As CompTel explains (at 9), ILECs' access to CPNI raises different privacy and competitive equity considerations from other carriers' access to such data. ILECs' customers had, and, for the most part, still have, no choice as to their local exchange carrier and thus

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particular carrier unless the customer takes special steps to effectuate a change, such as a written request to overrule the previously requested freeze.

[22] Intelcom at 2-5; MFS at 8-13.

cannot be considered to have voluntarily provided the ILEC with such data. Moreover, because the ILECs still possess bottleneck control over virtually all calls of any type, they acquire the most valuable CPNI of any carriers. Accordingly, it would serve both the privacy and competitive goals of Section 222 to impose more stringent CPNI restrictions on ILECs than on other carriers.

C. Disclosure to Third Parties Under Section 222(c)(2)

AT&T and Sprint contend that competitive LECs (CLECs) should not have to obtain written authorization in order to obtain CPNI from ILECs, where the CLEC has won the customer's local service business.[23] MCI agrees and urges that the Commission adopt such an approach in this proceeding, since the CLEC, in effect, is standing in the shoes of the ILEC in its relation to the customer.

D. Current CPNI Rules And Safeguards

The state commissions generally agree that the existing CPNI rules should remain in place, at least pending the promulgation of new rules, given the fact of BOC and GTE continued dominance.[24] The BOCs, on the other hand, argue that all CPNI rules should be the same for all carriers, given that all market segments are supposedly open to competition and that customer privacy expectations do not vary according to a carrier's market

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[23] AT&T at 17-19; Sprint at 5.

[24] See, e.g., Washington UTC at 9-10.

power.[25] Thus, the BOCs contend, the Computer III CPNI rules governing enhanced services should be eliminated and not applied to other uses of CPNI. As MCI explained in its initial comments (at 19-21), however, there is no reason to abandon any of the current CPNI rules. The conditions that led to the adoption of the requirements in the first instance still largely obtain today, given the continuing market power of the ILECs. Moreover, contrary to the arguments of some BOCs,[26] nothing in Section 222 suggests that Congress intended to displace the current CPNI rules. In fact, Section 601(c)(1) of the 1996 Act precludes such an argument, since it states that the 1996 Act "shall not be construed to modify, impair or supersede Federal ... law unless expressly so provided ...."

E. Subscriber List Information (SLI)

The BOCs and other LECs argue that requests for SLI should be in writing and that there should not be any regulations as to rates, terms and conditions, other than that SLI should be made available to all requesters under the same terms and conditions and at the same rates as apply to a supplying carrier's own directory.[27] MCI disagrees, for the reasons set forth in its initial comments. More extensive regulations will be needed to assure that this critical information is available to all

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[25] See, e.g., NYNEX at 3-7, 19-20.

[26] See, e.g., Ameritech at 14-17.

[27] See, e.g., id. at 18-19.

competitors under reasonable terms and conditions and on a uniform basis.[28]

NYNEX argues that SLI does not include non-published or non-listed numbers.[29] MCI believes that such information must be provided because it is part of the SLI database. Alternative directory service providers need the information because, if they acquire the information from another source, they need to know what not to publish in order to be able to honor consumer privacy needs. It is important to note that the only information required here is the customer's name and the fact that the customer is non-published or non-listed.

Conclusion

The Commission should take into full account MCI's Comments and these Reply Comments in fashioning its policy and rules in connection with CPNI and related matters.

Respectfully Submitted,

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[28] MCI disagrees with the position taken by Cincinnati Bell (at 12) that all carriers, not only those providing exchange service, should be required to furnish SLI. The obligations imposed by Section 222(e) are explicitly limited to carriers providing "exchange service." Once other carriers begin providing such services, however, their SLI will also be covered.

[29] NYNEX at 21.

CERTIFICATE OF SERVICE

I, Vernell V. Garey, do hereby certify that on this 26th day of June, 1996, copies of the foregoing **"MCI REPLY COMMENTS"** in CC Docket No. 96-115 were served by first-class U.S. mail, postage prepaid, to the following persons at the adresses listed below.

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